

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 05-16406  
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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT DECEMBER 1, 2006 THOMAS K. KAHN CLERK
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D. C. Docket No. 04-00459-CR-1-CAP-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEMOND THOMAS,  
a.k.a. Anthony Wright,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Georgia  
\_\_\_\_\_

**(December 1, 2006)**

Before **BIRCH** and **BLACK**, Circuit Judges, and **PRESNELL**,\* District Judge.

PER CURIAM:

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\* Honorable Gregory A. Presnell, United States District Judge for the Middle District of Florida, sitting by designation.

Lemond Thomas appeals his conviction and sentence for possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g) and 18 U.S.C. § 924(e). Thomas argues the district court erred by: (1) overruling his *Batson* challenge; (2) denying his motion to suppress; (3) denying his motions for judgment of acquittal; and (4) sentencing him as an Armed Career Criminal.

After oral argument and a thorough review of the record, we affirm issues one, three, and four without discussion.<sup>1</sup>

As to the second issue, oral argument and a review of the record convinces us that the district court committed clear error in re-adopting the credibility findings in the Magistrate Judge's Report and Recommendation (the Report) and denying Thomas's motion to suppress. The Report reconciled the conflicting testimony of the officers, but was prepared without consideration of Ms. Mathis's testimony. At trial, the district court stated it was unable to reconcile all of the conflicting testimony. While the court need not reconcile all of the evidence, it needs to do more than re-adopt a report made without the benefit of testimony that substantially undermines the basis of Officer Wagaman's reasonable suspicion. We therefore reverse the district court's denial of Thomas's motion to suppress, vacate his convictions, and remand for a new trial, directing the district court to

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<sup>1</sup> Counsel for Thomas conceded issues three and four were raised in order to preserve the issues for future review.

grant the motion to suppress.

**REVERSED, VACATED AND REMANDED.**